

29th August, 2019

To,
Telecom Regulatory Authority of India
Mahanagar Doorsanchar Bhawan
Jawahar Lal Nehru Marg,
New Delhi- 110002

Kind Attn: Shri Arvind Kumar, Advisor (B&CS)

Subject: Tata Sky Response to the Draft (Second Amendment) to The Telecommunication (Broadcasting and Cable) Services Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017

Dear Sir,

Please find enclosed Tata Sky's response to the above captioned draft amendment to the QoS regulations.

Thanking you,

Yours faithfully,



Himavat Chaudhuri
Chief Legal and Regulatory Affairs officer

Encl: As above

Tata Sky Comments on 'Draft (Second Amendment) to The Telecommunication (Broadcasting and Cable) Service Standards of Quality of Service and Consumer Protection (Addressable Systems) Regulations 2017'

TRAI had earlier shared the 'Channel Selection System API specification' document on April 24, 2019. Several DPOs including Tata Sky had then raised several objections/concerns to such proposed third-party channel selection eco-system. The copy of our email response dated May 22, 2019 is attached along with the present comments and ought to be read as a part of the present document - **Annexure 1**.

Incorrect attribution of motives

We strongly object to TRAI's adverse suggestion in its 'Explanatory Memorandum' that Distribution Platforms have no interest to provide consumer friendly options to consumers as easy channel selection options clashes with their own vested interest. This is wholly incorrect and only a convenient way to justify the push for third party channel selection App by shifting the blame on DPOs for difficulties faced by consumers in respect of channel selection, price increase etc. Whereas, it is now known that the new regulatory framework has turned out to be a cause of concern and costly affair for consumers, who have witnessed increase in their monthly subscription bills.

The inherent flaws in the new regulatory framework is the reason for TRAI coming out with 'Consultation Paper on Tariff related issues for Broadcasting and Cable services' dated August 16, 2019. In fact, one of the issues/questions put for deliberation in the said consultation paper is with respect to channel selection and the same is quoted hereunder:

"Q.13 How whole process of selection of channels by consumers can be simplified to facilitate easy, informed choice?"

On the one hand TRAI is inviting comments from stakeholders about how channel selection process can be simplified as a part of consultation in respect to tariff related issues, on the other hand it chooses to foist third party channel selection eco-system. These 3rd party App developers are unknown entities having no credibility and may well harbor dubious intentions. The fact that TRAI has ignored our previous inputs and still pushed ahead with this draft regulation makes it appear as a pre-determined exercise. This is contrary to spirit of consultation and consensus building which is fundamental to regulation making.

Tata Sky App

Tata Sky has put in time, effort and investments in developing the Tata Sky App. The App has continuously been improved upon and made more robust and intuitive based on the feedback from subscribers, media and the regulators. This App has been in existence for the past several years and with the new Regulations coming into force, we quickly updated our App to conform to the new framework.

On the request of TRAI, we had given a detailed demonstration of our Web Portal/App in July'19. Infact, we had received praise for the ease of navigation within our portal. There were several suggestions made by the TRAI. In the best interests of our subscribers and in the spirit of cooperation, we are implementing the recommendations and the development is underway.

Infact, we are constantly in the process of educating and spreading awareness amongst our subscribers to adopt digital means, web-portal and especially the Tata Sky App to interact with us. In case the Authority also pitches in and provide links/ download details of our App through any TRAI App and TRAI website, we would welcome the same.

TRAI in the ‘Explanatory Memorandum’ has alleged that the internal committee of TRAI observed that the process of selecting TV channels on various DPOs platforms is cumbersome and the process of subsequent change in the existing subscription is even more tedious. At the outset, such observations of the processes and navigation being difficult is an outcome of the new Regulations. Notwithstanding this, on account of such observations in a few DPOs, it is not a robust rationale for the channel selection process of all DPOs being overridden by a third-party channel selection eco-system, over which TRAI has no regulatory control.

Basic specifications

One approach, to resolving the issue at hand, could be that the Authority lays down basic minimum specifications and guidelines that an App of any DPO should have. And thereafter, motivate and encourage all DPOs to adopt those specifications.

We do not see how any third-party app/eco-system can resolve channel selection issues. There is no guarantee that such third-party app will facilitate better consumer friendly experience than the existing Tata Sky app. We have no doubt that the third-party channel selection app will only complicate the process of channel selection and will serve no purpose at all and to make the matter worse, TRAI will have no control over such third-party app developer.

Intellectual Property

It goes without saying that our web-portal/app is a matter of private expression of our business and in view of our special capability to interact with our subscribers, we are entitled to protection of our own intellectual property rights. Accordingly, the proposed mandate to us to disclose our proprietary information including development of interactivity features with our own subscribers to any third party would destroy us and would provide direct impetus to our competitors. We are entitled to protect our business and no regulation can mandate us to disclose our proprietary information. This is protected under Article 19 (1)(a) and Article 19 (1)(g) of the Constitution of India.

I.T. Act, 2000

Under the Information Technology Act, 2000 (IT Act) Tata Sky has the right to protect its software and data. Accordingly, the proposed mandate to Tata Sky to share such data with any third party would directly violate the rights of Tata Sky under the Information Technology Act. Under Section 81 of the Information Technology Act, 2000 it is mandated that the such Act will have an overriding effect over all other enactments. Thus, the rights protected by the IT Act cannot be taken away through these regulations. There could be other serious issues relating to foreign interference and national security concerns in case the Apps are not based outside India and consequently our data is stored in foreign servers.

In view of the above submissions, we, at this stage are not making any comments/suggestions in respect of ‘Channel Selection System API specification’ document and the same should not be construed as our acceptance/waiver of our right under the law. However, there are two main themes of the ‘Channel Selection System API specification’ which are, amongst others, of gravest concern to us and these are:

- (a) Security of subscriber data.
- (b) Third party app’s suggestion of an optimum configuration of bouquets to subscribers.

Privacy, Data protection, Liability

While TRAI states that it has addressed the security concerns with respect to subscriber data misuse, there is no mechanism provided that ensuring privacy and data protection standards are met by third-party app operator. Also, it is unclear as to how TRAI will hold the third-party app operator liable for subscriber and proprietary data leakages/theft. Privacy and data protection are serious issues inviting civil and criminal consequences. Ever since the Supreme Court held in favour of the right to privacy being “a fundamental right”, the focus on data protection has increased ever more. Recently the Supreme Court in its judgment dated September 26, 2018 passed in Justice K.S. Puttaswamy (Retd.) & Anr.Vs Union of India in dealing with the challenge to the various provisions of Aadhaar Act re-affirmed right to privacy to be a fundamental right of citizens.

Creating an unlicensed entity into a competitor

As regards allowing the third party app to suggest optimum configuration of channels/bouquet is concerned, the same seriously undermines competition by encouraging choice in favour of certain selected channels/bouquets. Third party app operator is being placed in a dominant position by being allowed to wield considerable influence in choice of particular channels/bouquets offered by certain Distribution Platforms over others. Since third party app operator is not a service provider under the TRAI Act, TRAI will have no control over how the third party app operator optimizes channel/bouquet suggestion. There is a real possibility of a search bias resulting from directing subscribers to certain channels/bouquets over others and, thereby, disadvantaging business of certain Broadcasters and Distribution Platforms who do not offer such channels/bouquets.

Need for differentiated offerings

Such proposals overlook the necessity for an operator to create a unique position/ branding in the market and pushes all offerings into a strait-jacket. Operators are continuously working towards improving our services and providing optimum customer satisfaction in their own unique and differentiated offerings. The growth of our business is directly co-related to customer satisfaction. It goes without saying that if we fail to provide satisfactory services and choice to the subscribers, our business will fail. This is pure market dynamics and that which fosters healthy competition between different players in the market. TRAI's attempt to take control over such services and delegate to Third Party Aps who neither have the responsibility towards the subscribers nor are accountable to answer to the subscribers who otherwise belong to us, is dangerous exercise.

ANNEXURE I

From: Manish Gupta/LEGAL/DEL/DL
Sent: 22 May 2019 14:05
To: 'vk.agarwal@traf.gov.in' <vk.agarwal@traf.gov.in>
Cc: Sunil Bajpai <sunil.bajpai@traf.gov.in>; Debkumar Chakrabarti <pradvbcs@traf.gov.in>; 'Arvind Kumar' <arvind@traf.gov.in>;
Subject: RE: Channel Selection System API specification

Dear Sir,

We have several concerns regarding this proposal of opening up our systems and allowing access to the Third Party Developers (TPD) Apps:

- The Tata Sky Website and Mobile App have an excellent user-friendly interface and is easy to operate. We have put in several years of investment and efforts in building a user-friendly App and website after user feedback for all these years of operations. The Digital India initiative made us to look beyond the existing and with 1000s of manhours we developed an easy human interface to the DTH platform. Allowing access to TPD Apps will not add any value to our offering and instead would tend to confuse our subscribers and degrade the user experience and hence would be work at cross-purposes to our efforts and investments. TPD Apps having unknown and questionable standards of quality cannot be permitted by us, since they will interfere with our subscriber's user experience. It is our right to choose the facilities we want to provide to our subscriber's and the way we express our business to the general world.
- The channel selection ecosystem which allows the TPD to optimize the channel selection for the subscribers is contrary to the regulatory regime itself which uncompromisingly preserves choice of channels with the subscribers alone. By allowing the TPD to suggest an optimum configuration of bouquets the choice stands shifted from the subscribers to the TPD. There is no guaranteeing that TPD may not be influenced by extraneous factors to push a particular type of bouquet, thus undermining the whole concept of 'informed choice' which TRAI through its new regulations voraciously espouses.
- Allowing the TPD to suggest optimum configuration of channels/bouquet seriously undermines competition by encouraging choice in favour of certain selected channels/bouquets. TPD is being placed in a dominant position by being allowed to wield considerable influence in choice of particular channels/bouquets offered by certain Distribution Platforms over others. Since TPD is not a service provider under the TRAI Act, TRAI will have no control over how the TPD optimizes channel/bouquet suggestion. There is a real possibility of a search bias resulting from directing subscribers to certain channels/bouquets over others and, thereby, disadvantaging business of certain Broadcasters and Distribution Platforms who do not offer such channels/bouquets.
- The entire channel selection ecosystem through TPD Apps poses serious threat to privacy and data protection. TPDs could infringe upon the privacy & data of users as they would have access to subscriber details (eg. mobile numbers) across all/multiple Distribution Platforms. If there was to be any leakage of subscriber data by the TPD, TRAI will have no means to enforce any corrective/remedial action. Under the license the DTH operators are responsible to maintain technical and security standards which will be put to severe risk if the TPD Apps

were to interconnect with the Distribution Platforms. The compliance aspects enumerated in paragraph 24 of the proposal document have no meaning when TRAI has no jurisdiction over the TPDs.

- The proposal document does not provide details about the certification process for the TPD Apps. Once a TPD App has been certified and registered with TRAI, there is no mention in the proposal document of real-time control on any version change done by the TPD on the App. A must carry for a TPD App through our softwares is not contemplated under the TRAI Act.
- For any of our subscriber logging into a TPD App, the App will be in a position to collect all the details of our subscriber and database could be misused and used against our business interests. Since, it is envisaged that, the Regulator would be the certifying and approving Authority for such TPD Apps, in case of any subscriber data leak/ breach from such Apps, would the Regulator assume the responsibility/ liability. And if not, then the way forward has not been mentioned.
- The proposal document does not mention as to how the TRAI shall indemnify a DPO in case of any consequential loss suffered due to data theft done by a TPD.
- The business model of the TPD has not been elaborated in the document. This is important because the TPD's conduct will depend upon his business model. To gain footfall, the App developer may even work against the interest of the DPO. In another scenario, the App developer could play favorite to a DPO(s) and against the interests of others. This would give rise to disputes between the DPOs and the App developers.
- This scheme implies the creation of competition between the DPO App and the TPD App vying for the attention of DPOs subscriber. This competition is unhealthy, misplaced, confusing to the subscriber experience and against DPOs business interests. This is not acceptable. There is no such parallel in any other sector in which there is a mandatory requirement to create a 'Super App'. The examples of Apps like 'Trivago', 'Make My Trip' are not comparable as they are neither mandatory in nature and all they do is help with a price comparison across operators. The job of the TPD Apps, in this proposal, is not to compare prices across various DPOs.
- In the Prepaid scenario (all DTH Operators are prepaid), the customer would need to have a sufficient recharge balance as a prerequisite to effect any changes in his package. Alternatively, the customer would need to keep flipping between the DPO App (for the recharge/payment) and the TPD App (for the selection) which will provide a broken (not seam-less) experience to the subscriber.
- In the event of some concern, grievance, or complaint against the experience or a process failure by the TPD App, the App developer would need to create and operationalize a redressal and escalation management mechanism. There is no such mention of this in the proposal document. Setting up such a mechanism requires considerable investments, training and efforts and therefore may not be a feasible option for regular App developing community. Whoever embarks on this journey would need to have a source of revenue and therefore it is important that the DPOs need to have an over-view of the business model of the App developers and assess whether that model does not work at cross-purposes to the DPOs business.

- Notwithstanding the above, we envisage numerous complaints still coming from our subscribers at our call centers in case of error, poor/ incomplete experience faced by our subscriber at the TPD App. Since we will have no visibility to the App, we will not be able to resolve the issue going forward. Moreover, it shall be unviable for any company to have a team working especially for TPD App consumer complaints.
- The television business experiences a lot of spikes for example, cricket match days, election days, etc. While our systems are designed to be able to handle the load, we believe that the TPD App will not be able to cope up with such loads leading to negative experience faced by our subscribers.
- Directing interchange of information between a Distribution Platform and TPD has not been envisaged in the TRAI Act and therefore any arrangement of a DPO with a TPD cannot be regulated since the TPD is not a service provider under the TRAI Act. A TPD is a third party when it comes to relationship between the Distribution Platform and its subscriber. The current licensing and regulatory regime do not allow for any third party to step in between the Distribution Platform and its subscriber. It is patently wrong to allow a third party to come in between the Distribution Platform and its subscriber as it runs contrary to the license conditions and the regulations. Superimposition of such 'App' on the Distribution Platforms is an intrusion into the business of the Distribution Platforms who are authorized and responsible for managing their relationship with their subscribers.
- Helping our subscriber to choose the optimum packs and channels, from within the available catalogue, is the sole responsibility of the DPO. We have the right to express our business in the most competitive and an efficient manner. The Regulator may suggest and recommend various improvements that we would be happy to evaluate and incorporate. The Regulator cannot be involved in the micro-details of how we run our business and facilities. Freedom to work in a regulated environment is the basic purpose of TRAI Act, and not that we have to surrender the entire business to TRAI so that it can reduce all businesses into a common platform. TRAI would not have the jurisdiction to enter the boardroom of the DPO and decide for it as to how it should run its business. Confidentiality of our business is sacrosanct to us and we would surely guard it. We therefore say that TPD App intrusion into our area of responsibility is not acceptable.

In light of the concerns stated above, and considering the risks involved to privacy and data protection and the fact that such TPD Apps would be running afoul of the licensing and regulatory framework, we would strongly recommend TRAI may not proceed ahead with this proposal. There are some serious concerns that the proposed channel selection ecosystem poses to the Service Providers (particularly the Distribution Platforms) and their subscribers. In any case, it would be appropriate that TRAI should first initiate a detailed consultation process.

The above does not contain complete statements of facts and law relating to the subject matter; nor a waiver of any rights, claims or defences; all of which we reserve.

Thanks

Warm regards

Manish Gupta
Tata Sky